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FIRST GENERAL COUNSEL'S REPORT

MUR 6973

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DATE COMPLAINT FILED: October 20, 2015

DATE OF NOTIFICATION: October 26, 2015

DATE OF LAST RESPONSE: December 16, 2015

DATE ACTIVATED: January 22, 2016

ELECTION CYCLES: 2012, 2016

EXPIRATION OF SOL: Earliest: August 2016

Latest: October 2020

COMPLAINANT:

Timothy A. La Sota, PLC

RESPONDENTS:

Ruben Kihuen

Ruben Kihuen for Congress and Jay Petterson

in his official capacity as treasurer

Tacos and Beer LLC

Alien Tequila Spirits Company, LLC

Latin Chamber of Commerce

Embassy Nightclub

Ramirez Group, Inc.

ActBlue

Daniel Chavez

RELEVANT STATUTES
AND REGULATIONS¹:

52 U.S.C. § 30104(b)

52 U.S.C. § 30118(a)

52 U.S.C. § 30120

52 U.S.C. § 30125(e)(2)

11 C.F.R. § 104.3(a), (b)

11 C.F.R. § 104.11(b)

11 C.F.R. § 110.11

11 C.F.R. § 114.2(b), (d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

I. INTRODUCTION

The Complaint in this matter alleges that Ruben Kihuen and his principal campaign committee, Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer (the "Committee") (collectively, "the Respondents"), violated multiple provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

First, the Complaint alleges that the Respondents accepted and failed to report potentially prohibited corporate in-kind contributions in the form of free event space, food, beverages, and invitations from two corporate entities, Tacos and Beer LLC ("Tacos and Beer") and Embassy Nightclub, in connection with fundraisers held on April 25, 2015, and June 29, 2015, respectively. The Complaint alleges further that the June 29, 2015, Embassy Nightclub fundraiser took place at the same time as an event hosted by the Latin Chamber of Commerce and Alien Tequila Spirits Company, LLC ("Alien Tequila"), and that those entities sponsored the Kihuen fundraiser, resulting in unreported in-kind contributions. Next, the Complaint alleges that the Committee failed to report certain campaign expenditures, including salary payments to staff, Kihuen's travel costs, and office rent owed to Ramirez Group Inc. ("Ramirez Group"), Kihuen's employer. The Complaint also alleges that Kihuen's website solicitation page incorrectly states that it is "Paid for by ActBlue and not authorized by any candidate or candidate's committee." Lastly, the Complaint alleges that Kihuen paid former campaign manager Daniel Chavez for services rendered in connection with his 2012 congressional run from his Nevada state senate campaign account, resulting in an impermissible transfer from a state committee to a federal committee.

The Commission received responses from Kihuen and the Committee ("Committee Response"), Alien Tequila, ActBlue, and Daniel Chavez. The responses generally deny that any

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1 vendor made, or that the Committee received, impermissible contributions, but the Committee
2 did amend disclosure reports to reflect certain small in-kind contributions and expenditures. The
3 Committee further denies that it failed to timely report the other campaign expenses or that
4 Kihuen paid for expenses related to his 2012 federal campaign with funds from his state senate
5 campaign account. Chavez also denies being paid for expenses related to Kihuen's previous
6 federal campaign with impermissible funds. ActBlue and the Committee maintain that the
7 relevant disclaimer was in compliance with the Act. Tacos and Beer, the Embassy Nightclub,
8 the Ramirez Group, and the Latin Chamber of Commerce did not submit responses.

9 Based on the Complaint and Responses, we recommend that the Commission: (1) find no
10 reason to believe that Kihuen and the Committee accepted in-kind contributions, prohibited or
11 otherwise, from Tacos and Beer, Alien Tequila, Embassy Nightclub, or the Latin Chamber of
12 Commerce in connection with April 25th and June 29th fundraisers; (2) dismiss as *de minimis* the
13 allegations that the Committee failed to report the receipt of an in-kind contribution and an
14 outstanding debt in connection with these fundraisers; (3) dismiss the allegation that the Ramirez
15 Group made and the Committee accepted a prohibited in-kind contribution in connection with
16 office space that it failed to report; (4) find no reason to believe that the Committee failed to
17 report expenditures/debts made in connection with office space, payroll, travel, and Facebook
18 advertisements; (5) find no reason to believe that ActBlue and the Committee violated the
19 disclaimer requirements; (6) find no reason to believe that Kihuen made impermissible transfers
20 from his state senate committee account for work performed on his 2012 congressional
21 campaign; and (7) find no reason to believe that Daniel Chavez violated any provision of the Act
22 or regulations.

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II. FACTUAL AND LEGAL ANALYSIS

Ruben Kihuen is currently a state senator representing the 10th district of Nevada. He is also a House candidate in Nevada's 4th congressional district in 2016 and Ruben Kihuen for Congress is his principal campaign committee. Kihuen was also a congressional candidate for the 1st district of Nevada in 2012 but withdrew from that race in February 2012.²

A. Unreported prohibited contributions

The Act prohibits corporations from making contributions to a federal political committee other than independent-expenditure-only political committees, and further prohibits any officer of a corporation from consenting to any such contribution by the corporation.³ The Act further prohibits a candidate or political committee from accepting or receiving any contribution prohibited by section 30118(a).⁴ A treasurer of a principal campaign committee of a candidate for the House of Representatives is required to file, in a non-election year, quarterly reports of receipts, including contributions, and disbursements.⁵ In-kind contributions shall be reported as a receipt in accordance with section 104.3(a) and as an expenditure in accordance with section 104.3(b).⁶ A debt or obligation, including a loan, written contract, written promise

² Committee Resp. at 1; *see also* Statement of Organization, Ruben Kihuen for Congress (Sept. 26, 2011). Although the Committee filed a Statement of Organization, it did not list a specific congressional district and Kihuen did not file a Statement of Candidacy with the Commission which resulted in a Request for Additional Information from the Reports Analysis Division. *See* Request for Additional Information, Ruben Kihuen for Congress (Oct. 28, 2011). The 2012 Committee continued to file disclosure reports until it amended its Statement of Organization to indicate that Kihuen intended to be a candidate in the 4th District. Statement of Candidacy, Ruben Kihuen (May 7, 2015); Statement of Organization, Ruben Kihuen for Congress (May 7, 2015). On its first disclosure report, the July 2015 Quarterly Report, the 2016 Committee reported cash on hand totaling \$6,654.37, which included the remaining funds from the 2012 Committee. *See* July 2015 Quarterly Report (July 15, 2015).

³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (e).

⁴ *Id.*; *see also* 11 C.F.R. § 114.2(d).

⁵ *Id.* § 30104(a)(2)(B), (b); *Id.* §§ 104.3(a)(2), (b).

⁶ *Id.* § 104.13(b).

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1 or written agreement to make an expenditure, the amount of which is over \$500 shall be reported
2 as of the date on which the debt or obligation was incurred, except that any obligation incurred
3 for rent, salary, or other regularly recurring administrative expenses shall not be reported as a
4 debt before the payment due date.⁷

5 1. April 25, 2015 Fundraiser

6 The Complaint alleges that Tacos and Beer provided free event space, "lavish hors
7 d'oeuvres," beverages, and wait staff to Kihuen in connection with an April 25th fundraiser,
8 which constituted in-kind contributions that the Committee did not report.⁸ The Complaint states
9 that the Committee's failure to report any expenditures on its July 2015 Quarterly Report in
10 connection with the fundraiser creates the possibility that these services and items were provided
11 as in-kind contributions.⁹ It further asserts that the in-kind contributions may have been
12 prohibited corporate contributions.¹⁰

13 Kihuen and the Committee respond that: (1) the event was held in a public portion of the
14 restaurant; (2) the individuals helping to serve food were campaign volunteers; (3) the \$879
15 spent for the food was initially paid for by the Ramirez Group, which later invoiced the
16 Committee for the expenses; (4) an individual, Claritssa Sanchez, paid for a cake (\$118), and the

⁷ *Id.* § 104.11(b).

⁸ Compl. at 1. The Complaint provides, as support for its allegation, Facebook and Twitter post, related to the evening. *See Id.*, Attach. 3.

⁹ *Id.* Complainant asserts that use of the event space does not fall under the exception found in 52 U.S.C. § 30101(8)(B)(ii) for the use of noncommercial community rooms and personal residences for political events and 52 U.S.C. § 30101(8)(B)(iii) requires that food and beverages be provided at cost.

¹⁰ *Id.*

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1 Committee reported that cost as an in-kind contribution on its Amended July 2015 Quarterly
2 Report; and (5) all beverages were provided via a cash bar.¹¹

3 Based on the Respondents' direct refutations of the Complaint's allegations, we conclude
4 that neither Kihuen nor the Committee received a prohibited in-kind contribution from Tacos and
5 Beer in connection with the April 25th fundraiser. However, it appears that the Committee
6 should have reported the receipt of the in-kind contribution (\$118) and the outstanding debt
7 (\$879) on its original July 2015 Quarterly Report,¹² but it did not report them until December
8 2015, after the complaint was filed. However, given the small amounts at issue, we recommend
9 the Commission dismiss the reporting allegation.

10 2. June 29, 2015, Fundraiser

11 The Complaint alleges that Alien Tequila and the Latin Chamber of Commerce¹³
12 "hosted" a Kihuen fundraiser at the Embassy Nightclub in Las Vegas on the same date and in the
13 same event space as a Latin Chamber of Commerce event where event space, food, beverages,
14 and invitations may have been provided at no cost to the Committee.¹⁴ Further, the Complaint
15 asserts that the Embassy Nightclub "promoted" Kihuen's fundraiser and the Latin Chamber of
16 Commerce event using similar invitations.¹⁵ According to the Complaint, the Latin Chamber of

¹¹ Committee Resp. at 2. The Committee Response cites to a recent advisory opinion in support of the assertion that attendees at committee events can pay for their own food, beverages, and valet parking as described in the advisory opinion without making in-kind contributions to the Committee. See Advisory Op. 2015-07 (Hillary for America). See also Amended July 2015 Quarterly Report (Dec. 14, 2015).

¹² See 52 U.S.C. § 30104(b)(8).

¹³ According to the Complaint, it is unclear whether the Latin Chamber of Commerce is a corporate entity or a non-profit entity. *Id.* at 2. To date, we have been unable to find any publicly available information suggesting that it is a corporate entity.

¹⁴ Compl. at 1.

¹⁵ *Id.* at 2, Attach. 5.

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Commerce event and the Kihuen fundraiser were essentially one event “masquerading” as two events given their proximity and, therefore, it is likely Alien Tequila and the Latin Chamber of Commerce paid for the Kihuen fundraiser.¹⁶ The Complaint also asserts that the Committee failed to disclose the receipt of in-kind contributions in connection with this event.¹⁷

The Committee asserts that it disseminated its own advertising for the fundraiser, did not “co-brand” any advertising with the Latin Chamber of Commerce, and that the advertising attached to the Complaint was “merely an event listing done by the night club that is done for all hosted events.”¹⁸ According to the Committee, the cost of the food (\$218.45) for the fundraiser was paid for by Zaher Fakh, ¹⁹ the beverages were provided through a cash bar, and there was no cost for the use of the public space in the nightclub.²⁰ The Committee states that it has amended its report to disclose the receipt of an in-kind contribution from Fakh.²¹ Alien Tequila’s response similarly denies hosting the June 29th fundraiser or making any contribution, in-kind or otherwise, to the Committee.²² Alien Tequila states that it sponsored several private parties throughout the opening weekend for the Embassy Nightclub, but not the Kihuen fundraiser,

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ Committee Resp. at 2. The Committee Response also notes that any attempt by the nightclub to promote the event at its own premises on social media would be exempt from regulation under the Commission’s internet exemption. *Id.* at 2; see also 11 C.F.R. § 100.94; Statement of Reasons of Chairman Lee F. Goodman and Commissioners C. Hunter and Matthew Petersen, MUR 6729 (Oct. 24, 2014). The Committee Response also states that only 10 people attended the fundraiser, and it raised only \$800, not the \$9,000 alleged in the Complaint. Compl. at 2.

¹⁹ The Complaint refers to the individual as “Zaher Farkh” but the disclosure report lists the individual’s name as “Zaher Fakh.” See Amended July 2015 Quarterly Report (Dec. 14, 2015).

²⁰ Committee Resp. at 2.

²¹ *Id.*; see also Amended July 2015 Quarterly Report (Dec. 14, 2015).

²² Alien Tequila Resp. at 1. Alien Tequila states that its logo appears nowhere on Kihuen’s flyers. *Id.*

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1 which took place at the Ate Lounge Las Vegas, another venue within the Embassy Nightclub's
2 70,000 square foot space, and in a separate area from the Latin Chamber of Commerce event.²³

3 After reviewing the available information, it appears that the Latin Chamber of
4 Commerce event and the Kihuen event were separate events. In addition, the Respondents have
5 provided sufficient information to show that Kihuen used a public space for which there was
6 normally no charge, the food was paid for by an individual whose in-kind contribution was
7 reported, and the beverages were available by cash bar. The invitations attached the complaint
8 indicate that Alien Tequila hosted and promoted events on social media that were scheduled to
9 take place at the same time as the Kihuen fundraiser, but they do not show that it hosted or
10 promoted the Kihuen fundraiser.²⁴

11 Accordingly, we recommend that the Commission find no reason to believe that Alien
12 Tequila, the Latin Chamber of Commerce, or Embassy Nightclub²⁵ made an in-kind
13 contribution, prohibited or otherwise, to Kihuen and the Committee. However, as with the April
14 25th fundraiser, the Committee did not timely report the receipt of the in-kind contribution from
15 Fakih. Given the small amount at issue, though, we recommend that the Commission dismiss the
16 reporting violation.²⁶

17 3. Other In-Kind Contributions and Unreported Campaign Expenses

18 The Complaint alleges that the Committee failed to report the receipt of a prohibited in-
19 kind contribution in the form of office space, expenditures related to payroll, Kihuen's travel to

²³ *Id.*

²⁴ See Compl., Attach. 5.

²⁵ There is no publicly available information to suggest that the Embassy Nightclub is a corporate entity.

²⁶ 52 U.S.C. § 30104(b)(2)(A); 11 C.F.R. § 104.13.

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1 Washington, D.C., and Facebook advertisements.²⁷ According to the Complaint, Kihuen's
2 employer, the Ramirez Group, is providing office space at no cost to the Committee, the value of
3 which has not been reported as a potentially prohibited in-kind contribution by the Committee.²⁸
4 The Committee responds that it began subleasing campaign office space from the Ramirez
5 Group in September 2015 at \$400 per month. It further states that at the time, it only required
6 space for two employees, and the space at the Ramirez Group suited its needs, although it
7 anticipated opening a full campaign office once it hired additional employees.²⁹ The Committee
8 did not produce any documents regarding the sublease with the Ramirez Group (e.g., leases,
9 cancelled checks), and the Ramirez Group did not file a response to the complaint.

10 According to the Respondents, although it did not pay rent for September 2015 until after
11 the reporting deadline for the October 2015 Quarterly Report, it was not required to disclose that
12 debt because the rent did not exceed \$500, nor was it more than 60 days in arrears.³⁰ On its 2015
13 Year-End report, the Committee reported making a \$1,200 disbursement to the Ramirez Group
14 on November 13, 2015, which included the rent for September 2015.³¹

15 We recommend the Commission dismiss the allegations pertaining to the Committee's
16 use of the Ramirez Group office space. Given the connection between the candidate and the
17 Ramirez Group, the fact that rent was not collected in advance but was provided on credit, the
18 lack of any documents evidencing the sublease, and the lack of a response from the Ramirez

²⁷ Compl. at 3.

²⁸ Committee Resp. at 3.

²⁹ *Id.*

³⁰ *Id.*; see also 11 C.F.R. § 104.11(b).

³¹ See 2015 Year-End Report (Jan. 31, 2016).

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14 We conclude that the Committee properly reported its payroll as disbursements on the
15 appropriate reports. The Committee was not required to report the compensation arrangements as
16 a debt unless it failed to make the salary payments by July 1, 2015.³⁵ The Committee paid Chase
17 on June 24, 2015, which it timely reported on its July 2015 Quarterly Report as a disbursement,

³⁵ See 11 C.F.R. §§ 104.11(b), 116.6(a).

1 and it paid Rivers as agreed on July 1, 2015, and timely reported this payment on its October
2 Quarterly Report.

3 Third, the Complaint asserts that the Committee failed to report expenses in connection
4 with two trips Kihuen took to Washington, D.C., on May 5, 2015, and June 15-16, 2015.³⁶ The
5 Committee responds that the May 5th trip was for a Cinco de Mayo event at the White House that
6 was unrelated to the campaign and therefore it was not required to report any expenditures
7 associated with the travel.³⁷ It acknowledges that the June 15th trip was campaign-related, but
8 explains that it timely disclosed the expenses on the Committee's October 2015 Quarterly
9 Report.³⁸ The available information supports a no reason to believe finding as to this allegation.

10 As to the expenditure reporting for the Facebook advertisements totaling \$67, the
11 available information supports the Committee's contention that it was not required to report it on
12 its July 2015 Quarterly Report because the advertising costs were less than \$500 and the debt
13 was not over 60 days old as of June 30, 2015.³⁹

14 Accordingly, we recommend that the Commission (1) dismiss the allegation that the
15 Ramirez Group made and the Committee accepted a prohibited in-kind contribution that it failed
16 to report; and (2) find no reason to believe that the Committee violated 52 U.S.C. § 30104(b)

³⁶ Compl. at 3.

³⁷ Committee Resp. at 4.

³⁸ According to the Committee, campaign manager, David Chase, accompanied Kihuen on the trip, paid for both airline tickets and was timely reimbursed in accordance with 11 C.F.R. § 116.5. Committee Resp. at 4. In addition, the Committee reported Kihuen's payment for his accommodations as an in-kind contribution on the October 2015 Quarterly Report. *Id.*; see also October 2015 Quarterly Report (Oct. 15, 2015). The Committee further responds that Mr. Chase stayed at a friend's home while he was in Washington, D.C. *Id.* The Committee also paid an additional invoice (Connectiva) on July 15, 2015, for an event that took place in connection with this trip, and it reported the expense on its October 2015 Quarterly Report. See *Id.*, Exh. A.

³⁹ See *Id.*, Exh. B; see also 11 C.F.R. § 104.11(b).

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1 with respect to its expenditure/debt reporting related to payroll, Kihuen's travel to Washington,
2 D.C., and Facebook advertisements.

3 **B. Disclaimer Allegation**

4 The Complaint alleges that the solicitation page on Kihuen's website contains his
5 congressional banner at the top and a disclaimer at the bottom that states "Paid for by ActBlue
6 and not authorized by any candidate or candidate's committee."⁴⁰ According to the Complaint,
7 the banner and disclaimer are misleading and imply that ActBlue is actually hosting the
8 Committee's website and receiving the contributions made from this page.⁴¹

9 Both ActBlue and the Committee explain that the Committee's website solicitation page
10 was linked to ActBlue, which acted as an intermediary to process Kihuen contributions.⁴²
11 ActBlue is a non-connected federal committee that acts as an intermediary for contribution
12 solicitations made by Democratic candidates, and it does not solicit contributions for any
13 candidate or committee.⁴³ As a political committee, ActBlue places a disclaimer on every page
14 of its website, including the contribution form page.⁴⁴ ActBlue states that almost all visitors to

⁴⁰ Compl. at 5.

⁴¹ *Id.*; see also *Id.*, Attach. 17.

⁴² See Committee Resp. at 4; ActBlue Resp. at 1.

⁴³ ActBlue Resp. at 2; see also 52 U.S.C. § 30116(a)(8). In addition, ActBlue does not provide tools for candidates to create their own fully functional web pages to be hosted on its domain, but rather provides tools for optimized stand-alone contribution forms. *Id.* at 2. The Committee Response also asserts that the Committee is permitted to link or steer visitors from its own website to the website of a third party without that link constituting an in-kind contribution from one entity to another. Committee Resp. at 4; see also 11 C.F.R. § 100.94(b). In addition, the Committee asserts that ActBlue's use of Kihuen's logo would not constitute republication of campaign material because ActBlue's website is not a public communication. Committee Resp. at 4; see also 11 C.F.R. §§ 100.26, 109.21(c)(2).

⁴⁴ *Id.* at 2. According to ActBlue, it would normally not be required to place a disclaimer on its contribution forms because it does not charge candidates or committees a fee to create a contribution form hosted on its website and therefore the contribution forms do not constitute a public communication. *Id.* However, its status as a registered non-connected political committee requires it to place a disclaimer on every page of its website, including the contribution forms. *Id.*; see also 11 C.F.R. § 110.11(a)(1).

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1 the contribution forms on its website, including Kihuen supporters, arrive through a campaign.
2 website link, and the campaign website contains the appropriate disclaimer showing who is
3 responsible for the content on the campaign's website.⁴⁵ ActBlue and the Committee state that
4 that a Kihuen disclaimer was on the Kihuen website page linked to ActBlue.

5 The Commission's regulations require disclaimers for all internet websites of political
6 committees available to the general public as specified by section 110.11(c).⁴⁶ Our review of the
7 available record indicates that the Committee and ActBlue used the appropriate disclaimers.
8 Although the original Kihuen website page is unavailable, Respondents assert that at the time of
9 the complaint, it contained a Kihuen disclaimer.⁴⁷ The current Kihuen webpage, which no
10 longer links to ActBlue, also contains the appropriate disclaimer.⁴⁸ The Complaint attaches what
11 appears to be the Committee's contribution page hosted by ActBlue, which shows the
12 Committee's logo at the top of the page and states "your contribution will benefit Ruben
13 Kihuen."⁴⁹ The ActBlue disclaimer at the bottom of the page appears to show sponsorship of the
14 contribution page, not the Committee's website itself.⁵⁰ Under these facts, we recommend that
15 the Commission find no reason to believe that the Committee or ActBlue violated 52 U.S.C.
16 § 30120 and 11 C.F.R. § 110.11(a)(1), (3), and (c).

⁴⁵ *Id.* The Response states "given that the ActBlue contribution forms are not public communications, are not paid for by anyone else, and serve a functional rather than a communicative purpose, adding a disclaimer with information about the creator of each contribution form on every page of the site would not only be impractical, it would provide no useful information to the public." *Id.*

⁴⁶ 11 C.F.R. § 110.11(a), (c).

⁴⁷ Committee Resp. at 5.

⁴⁸ See <http://www.rubenforcongress.com>.

⁴⁹ Compl., Attach. 17.

⁵⁰ *Id.*

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C. Possible Transfer of State Senate Funds for Federal Expenses

A federal candidate shall not solicit, receive, direct, transfer or spend funds in connection with an election for federal office, including federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁵¹

The Complaint alleges that in August and September 2011, Kihuen made three payments totaling \$4,745 to campaign consultant Daniel Chavez from his state senate committee account for work performed during Kihuen's first, aborted 2012 congressional run.⁵² Complainant believes that the work performed by Chavez was not in connection with Kihuen's state senate seat since he had just finished his legislative session during that time and was not up for re-election until 2014.⁵³ In essence, Complainant asserts that the payments represented impermissible transfers from Kihuen's state senate committee account to his 2012 congressional account.

The Committee responds that the state committee's payments to Chavez were solely related to advising Kihuen on redistricting in connection with state senate district and legislative issues.⁵⁴ The Committee further asserts that since the payments were made for non-federal purposes, they were proper and do not constitute a contribution from the state senate committee

⁵¹ 52 U.S.C. § 30125(e)(1)(A).

⁵² *Id.* at 5. In September 2011, Kihuen announced his intention to campaign for Nevada's 1st congressional district but appears to have withdrawn in February 2012 before declaring his candidacy.

⁵³ *Id.* According to Complainant, Chavez was never employed by nor paid from Kihuen's state senate account before or after the payments made in August, September, or October 2011, and Chavez was listed as the campaign manager between July 2011 through February 2012 for Kihuen's first congressional run, but not for the state senate campaign. *Id.*

⁵⁴ Committee Resp. at 4. As an aside, the Committee asserts that it is irrelevant whether the advice was related to Kihuen's status as a legislator or a potential candidate for federal office because payments for redistricting advice and analysis are specifically exempted from the Act's definition of "expenditure." *Id.* at 4; *see also* Advisory Ops. 1982-37 (Edwards) and 1981-35 (Thomas).

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1 account to the 2012 congressional campaign account.⁵⁵ Chavez responds, in a sworn affidavit,
2 that the state senate committee hired him as a consultant in August 2011 at a flat rate of \$5,500
3 per month, and the timing of the pro-rated payments he received from the state committee in
4 September and October 2011 for work performed in August 2011 was the result of an invoicing
5 delay.⁵⁶ Chavez further responds that when Kihuen decided to seek election in the 2012
6 congressional race, Chavez ceased all work for the non-federal committee and was separately
7 retained for the federal campaign.⁵⁷

8 There is no available information to suggest that Chavez was compensated with state
9 committee funds for work performed for the 2012 congressional campaign. The Committee's
10 explanation and Chavez's sworn affidavit sufficiently support the conclusion that while the
11 payments to Chavez overlapped the beginning of Kihuen's congressional campaign, the
12 underlying work was unrelated to the congressional campaign.⁵⁸ Therefore, we recommend that
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⁵⁵ *Id.* at 4.

⁵⁶ Chavez Resp., Affidavit ¶¶ 2, 3, 6 (Dec. 18, 2015).

⁵⁷ *Id.* at ¶ 5.

⁵⁸ We also note that the cited advisory opinions appear to support the Committee's assertion that even if the redistricting analysis was performed in conjunction with Kihuen's potential federal candidacy, the payment for these services would not constitute a contribution under the Act. *See* Advisory Ops. 1982-37 (Edwards) and 1981-35 (Thomas).

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the Commission find no reason to believe that Kihuen made impermissible transfers from the state senate committee account to the 2012 congressional account in violation of 52 U.S.C. § 30125(e)(2) and no reason to believe that Chavez violated any provision of the Act or regulations.

III. RECOMMENDATIONS

1. Find no reason to believe that Ruben Kihuen violated 52 U.S.C. § 30118(a) and 30125(e)(2) and 11 C.F.R. § 114.2(d) and 110.3(d).
2. Find no reason to believe that Tacos and Beer LLC violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).
3. Find no reason to believe that Alien Tequila Spirits Company, LLC violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).
4. Find no reason to believe that Latin Chamber of Commerce violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).
5. Find no reason to believe that Embassy Nightclub violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).
6. Find no reason to believe that Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer violated 52 U.S.C. §§ 30118(a) and 30120 and 11 C.F.R. §§ 114.2(d) and 110.11(a)(1), (c) with regard to the April 25, 2015, and June 29, 2015, fundraisers.
7. Dismiss the allegation that Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer failed to timely report the receipt of an in-kind contribution and a debt in connection with the April 25, 2015, and June 29, 2015, fundraisers.
8. Dismiss the allegation that Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer accepted a prohibited in-kind contribution from the Ramirez Group, Inc. that it failed to report in violation of 52 U.S.C. §§ 30104(b), 30118(a) and 11 C.F.R. §§ 114.2(b).
9. Find no reason to believe that ActBlue violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(a)(1), (3).
10. Find no reason to believe that Daniel Chavez violated the Act or regulations.
11. Approve the Factual and Legal Analysis.

1 12. Approve the appropriate letters.

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3 13. Close the file.
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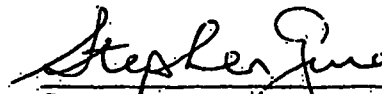
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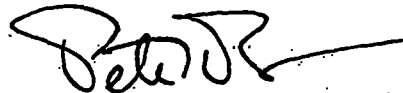
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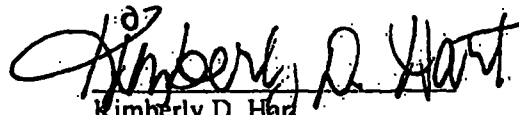
Kathleen M. Guith
Acting Associate General Counsel
for Enforcement



Stephen A. Gura
Deputy Associate General Counsel
for Enforcement



Peter G. Blumberg
Assistant General Counsel



Kimberly D. Hart
Attorney

4.25.16
Date

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